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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	86801235
Applicant	Lucida Floorings International Inc
Applied for Mark	TIMBERCORE
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**In the United States Patent & Trademark Office
Before the Trademark Trial and Appeal Board**

Applicant/Appellant:

**Lucida
Floorings
International
Inc.**

Serial No.: **86801235**

Filing Date:

10/17/2015

Mark:

TIMBERCORE

Law Office: **115**

Examining Attorney:

Marc J. Leipzig

Appeal Brief

Commissioner for Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

A Request for Reconsideration after Final Office Action was filed by the Applicant on September 1, 2016.

The present Appeal Brief is submitted in support of the Notice of Appeal filed electronically on 07/19/2016.

A communication mailed on 07/19/2016 from the Trademark Trial and Appeal Board (TTAB) indicated the deadline for filing the present Appeal Brief is sixty days from the mailing date thereof, i.e., 09/17/2016.

Appellant and owner of the refused mark is Lucida Floorings International, Inc.

I. Index of Cited Cases

Case Name

Blinded Veterans Assoc. v. Blinded American Veterans Found., 10 U.S.P.Q.2d 1432, 1436 (D.C. Cir. 1989)

In re Atavio Inc., 25 U.S.P.Q.2d 1361, 1362 (TTAB 1992).

In re Jim Crockett Promotions, Inc., 5 U.S.P.Q.2d 1455, 145 n.5 (TTAB 1987)

II. Statement of the Issue on Appeal and Requested Action by the TTAB

Registration of the present mark TIMBERCORE, for use in connection with _
"Bamboo flooring; Ceramic floor tiles; Ceramic tiles for flooring and facing; Ceramic tiles for flooring and lining; Floor panels not of metal; Floor tiles of wood; Hard wood flooring; Laminate flooring; Non-metal wall tiles; Parquet flooring; Parquet flooring made of wood; Slates for wall cladding; Synthetic flooring materials or wall-claddings; Wall panels not of metal; Wall tiles, not of metal", in class 019, has been finally refused under Trademark Act Section 2(e)(1).

The refusal of registration is based upon an asserted claim that the mark is merely descriptive

in nature.

Appellant respectfully requests reversal of the refusal of registration and allowance of the present application for publication as Appellant's mark, when applied to Appellant's services, does not present a mark that is merely descriptive of a feature of the applicant's goods.

III. Arguments

A term is arbitrary if it is one, which is commonly used in the language, but has no intrinsic connection to the product or service. A fanciful term is one that is "coined" for the purpose of serving as a trademark. *Blinded Veterans Assoc. v. Blinded American Veterans Found.*, 10 U.S.P.Q.2d 1432, 1436 (D.C. Cir. 1989). Regarding the pending mark, it is at worst, merely suggestive in nature.

A portion of the center, or "core", is made of a wood based product: plywood. The core, as shown in the applicant's office action response filed on May 31, 2016, provided the following candid information to the examiner

The "core" of this product is made from wood shaving particles that are pressed together under heat and pressure.

The wood shaving particles are about two inches long/wide and consist of hundreds of them, each held together by a small amount of adhesive.

The adhesive is kept to a minimum, which is made possible by the size of the wood particles. A saw dust or fiber interior would require a larger amount of glue. The small amount of glue is beneficial to the consumer as it allows for a minimum amount of formaldehyde to leach out, which is highly beneficial for the consumer

The core is also specially designed to have sufficient air pockets, which allows the core to expand or contract in warm or cold weather. Solid wood cores do not have such air pockets, which offers an advantage over using a core made of solid wood.

The "core," then is comprised of wood particles and other materials.

The mark, therefore is not descriptive: while there is wood involved it is in the form of large wood particles, along with adhesive and air pockets.

The mark is, accordingly, incongruous, indefinite, and susceptible to multiple connotations. T.M.E.P § 1209.01(a). The "core" of the product is neither solid wood, nor merely wood, but a composite material. "Timbercore" suggests the strength of solid wood, rather than the presence of plywood, although the product description made to the public indicates the precise nature of the interior of the product.

The word "timber" is defined, by Merriam-Webster, as "wood suitable for building or for carpentry" or "a large squared or dressed piece of wood ready for use or forming part of a structure." In the mind of consumers, "timber" means a piece of solid wood, not plywood. In the mind of relevant consumers, "Timbercore" means a flooring material that is as solid as a piece of timber might be, regardless of its composition. Thusly, the relevant consumer perception of the mark relies on the consumer's imagination, making more likely that the mark is suggestive rather than descriptive. In re Atavio Inc., 25 U.S.P.Q.2d 1361, 1362 (TTAB 1992).

If a proposed mark has more than one dictionary definition and there is at least one meaning which would be suggestive of some other relevant association, the mark is not merely descriptive. In re Jim Crockett Promotions, Inc., 5 U.S.P.Q.2d 1455, 145 n.5 (TTAB 1987). While plywood is partially made of wood molecules in the form of dust and chips, along with

adhesives, it is far from “timber” in the minds of the relevant consumers.

Wikipedia.org has this to say on the subject of “timber:”

“In Australia, Ireland, New Zealand and Britain, the term timber describes sawn wood products, such as floor boards. In the United States and Canada, generally timber describes standing or felled trees, before they are milled into boards, which are called lumber.

Timber there also describes sawn lumber not less than 5 inches (127 mm) in its smallest dimension. The latter includes the often partly finished lumber used in timber-frame construction.

In the United Kingdom, the word lumber is rarely used in relation to wood, and timber is almost universally used in its place; but lumber has several other meanings in Britain, including unused or unwanted items.” <https://en.wikipedia.org/wiki/Lumber>

Accordingly, the word “timber” conveys “strength” to the relevant consumer and is suggestive in nature. This evidence establishes secondary meaning under Section 2(f).

Conversely, “plywood” has a separate, unique meaning from “timber.”

Wikipedia.org provides the following knowledge:

“Plywood is a sheet material manufactured from thin layers or “plies” of wood veneer that are glued together with adjacent layers having their wood grain rotated up to 90 degrees to one another. It is an engineered wood from the family of manufactured boards which includes medium-density fibreboard (MDF) and particle board (chipboard).

All plywoods bind resin and wood fibre sheets (cellulose cells are long, strong and thin) to form a composite material.” (Emphasis added.)

As the plywood used in the core of the related good is a composite material, the applicant must explain the importance of that: *“A composite material (also called a composition material or shortened to composite which is the common name) is a material made from two or more constituent materials with significantly different physical or chemical properties that, when combined, produce a material with characteristics different from the individual components. The individual components remain separate and distinct within the finished structure. The new material may be preferred for many reasons: common examples include materials which are stronger, lighter, or less expensive when compared to traditional material.”*

https://en.wikipedia.org/wiki/Composite_material

As explained to the Examiner in a response to an office action, the “core” of the applicant’s product is one where the content of the wood dust and chips is involved as part of creating a truly new and different material than “wood.” The core involves the addition of wood molecules, yes, but the result is a constituent material with important and needed benefits derived from both an altered physical and chemical properties when compared to a slab of pure wood.

In fact, plywood comes in different “formulas,” each for a specific purpose.

Wikipedia.org provides further information:

*“**Softwood panel** is usually made either of cedar, Douglas fir or spruce, pine, and fir (collectively known as spruce-pine-fir or SPF) or redwood and is typically used for construction and industrial purposes.*

***Hardwood plywood** is made out of wood from angiosperm trees and used for demanding*

end uses. Hardwood plywood is characterized by its excellent strength, stiffness and resistance to creep. It has a high planar shear strength and impact resistance, which make it especially suitable for heavy-duty floor and wall structures. Oriented plywood construction has a high wheel-carrying capacity. Hardwood plywood has excellent surface hardness, and damage- and wear-resistance.

Tropical plywood is made of mixed species of tropical wood. Originally from the Asian region, it is now also manufactured in African and South American countries. Tropical plywood is superior to softwood plywood due to its density, strength, evenness of layers, and high quality.

High-strength plywood also known as aircraft plywood, is made from mahogany and/or birch, and uses adhesives with increased resistance to heat and humidity. It was used for several World War II fighter aircraft.

Flexible plywood is designed for making curved parts, a practice which dates back to the 1850s in furniture making.

Aircraft grade plywood, often Baltic birch, is made from 3 plies of birch, as thin as 1/16" thick in total, and is extremely strong and light. At 3/8" thick, mahogany 3-ply "wobble Board" or "Bendy Board" come in 4' x 8' sheets with a very thin cross grain central ply and two thicker exterior plies, either long grain on the sheet, or cross grain. Wobble board is often glued together in two layers once it is formed into the desired curve, so that the final shape will be stiff and resist movement. Often, decorative wood veneers are added as a surface layer.

Marine plywood is manufactured from durable face and core veneers, with few defects so it performs longer in both humid and wet conditions and resists delaminating and fungal attack. Its construction is such that it can be used in environments where it is exposed to moisture for long periods."

<https://en.wikipedia.org/wiki/Plywood>

Accordingly, the particular composite formula for the type of plywood used for any specific product must be selected according to the precise needs of the product itself.

"Timbercore," the mark, does not telegraph to the product consumer any of the science behind the creation of a composite material used in the design and production of the related product, and "wood" may well be one of the elements present in the formula used to create the related plywood, but the result is when combined, produce a material with characteristics different from the individual components. The "wood" used in the formula that results in the resulting plywood is no longer a distinct component, but rather, part of a chemical process that results in a new and unique material. Water may contain hydrogen and oxygen, but when combined in the proper chemical reaction, a new substance is created.

The mark is, accordingly, incongruous, indefinite, and susceptible to multiple connotations.

IV. Conclusions

For the reasons set forth in detail above, the refusal of registration based upon an asserted claim that the mark is merely descriptive in nature.

Favorable action is respectfully requested.

Respectfully submitted,

/Rod Underhill/

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